

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

October 14, 1997

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**No. 96-1999-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**JAMES R. HARRIS,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Milwaukee County: PATRICIA D. MCMAHON, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

PER CURIAM. James R. Harris appeals from a judgment of conviction entered after a jury found him guilty of two counts of first-degree intentional homicide, while using a dangerous weapon, contrary to §§ 940.01(1) and 939.63(1)(a)(2), STATS. Harris also appeals from an order denying his postconviction motion for relief. Harris claims that the trial court erroneously

exercised its discretion by admitting into evidence Harris's statement that he needed a place to stay before he committed a murder, and by admitting and publishing to the jury two photographs of the crime scene. Harris argues that he is entitled to a new trial because of the court's alleged errors. We disagree and affirm.

### **I. BACKGROUND.**

On June 20, 1995, James R. Harris shot and killed Shawana Gill and her brother, Gus Gill. Harris and Shawana had been living together for fourteen years, but for some time prior to the killings, their relationship had been deteriorating. Since Shawana was seeing another man, and Shawana's brother Gus had moved in with her, it had been agreed that Harris would move out of Shawana's house. The day before the murders, Harris and Shawana had an argument and Shawana told Harris he had to leave immediately. Harris called his cousin and said, while Shawana was in the room, "Man, I need a place to stay. Shawana has put me out, before there is going to be a murder in here."

The next day, Harris left the house in the afternoon and began drinking heavily. He returned later in the evening and began arguing with Shawana in the bedroom about her new boyfriend. Harris became angry, grabbed a shotgun from under the bed, and shot Shawana numerous times, killing her. Harris also shot and killed Shawana's brother Gus.

Harris was arrested and charged with two counts of first-degree intentional homicide, while using a dangerous weapon. Before trial, the State made a motion for admission of Harris's statement concerning his need to find a place to stay before he committed a murder. The trial court ruled that the statement was admissible, and it was admitted at trial. At trial, the State displayed

photographs of the crime scene to the jury, which were admitted into evidence. The jury found Harris guilty of both counts of first-degree intentional homicide while using a dangerous weapon, and Harris was sentenced to life in prison. Harris filed a motion for postconviction relief, which the trial court denied. Harris now appeals.

## II. ANALYSIS.

Harris claims that the trial court erroneously exercised its discretion by admitting into evidence his statement that he needed a place to stay before he committed a murder. A trial court's decision to admit or exclude evidence is a discretionary determination that will not be upset on appeal if it has a reasonable basis and was made in accordance with accepted legal standards and in accordance with the facts of record. *See State v. Jenkins*, 168 Wis.2d 175, 186, 483 N.W.2d 262, 265 (Ct. App. 1992), *cert. denied*, 506 U.S. 1002 (1992). Harris was charged with two counts of first-degree intentional homicide. His defense was that he was too intoxicated to form the intent to commit homicide, and that he was provoked. Even if the jury disbelieved Harris's first defense, and found that he was sober enough to form the intent to commit homicide, the prosecution still had the burden of proving that Harris had the intent to kill at the time of the murders. *See* § 940.01(1), STATS. Harris's statement, "Man, I need a place to stay. Shawana put me out, before there is going to be a murder in here," was admissible under § 908.01(4)(b), STATS., as a non-hearsay statement of a party opponent, and was clearly relevant to prove an element of the offense, namely, that Harris intended to

kill Shawana. Therefore, the trial court's decision to admit the evidence was a proper exercise of its discretion.<sup>1</sup>

Harris also claims that the trial court erroneously exercised its discretion by admitting and publishing to the jury two photographs of the crime scene. Harris failed to object to the photographs' introduction into evidence. Therefore, he has waived the right to argue the photographs were inadmissible. Section 901.03(1), STATS. The trial court's decision to display photographs to the jury is discretionary, and will be upheld unless it is wholly unreasonable or the only purpose of the photographs is to inflame and prejudice the jury. *See State v. Thompson*, 142 Wis.2d 821, 841, 419 N.W.2d 564, 571 (Ct. App. 1987). The photographs that Harris objects to depict a pool of blood on the floor of the bedroom where the murders occurred, and a piece of human skin tissue stuck to the bedroom wall. Although the photographs are grisly, we cannot say that their only purpose was to inflame and prejudice the jury. These two photographs, in conjunction with other photographs that were admitted into evidence, showed the jury how and where the shootings occurred. Therefore, they were relevant in showing Harris's intent to kill, and served a non-inflammatory purpose.

Harris also claims that the trial court erroneously exercised its discretion by displaying the photographs to the jury at the same time that he was taking the stand to testify. The record reveals that the photographs were shown to the jury before Harris took the stand, and that the trial court allowed Harris to take the stand while the jurors were "finishing up" examining the photographs. Harris

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<sup>1</sup> Both the prosecution and the defense characterize Harris's statement as a prior bad act and present arguments as to whether it was admissible under § 904.04, STATS. Because we conclude the statement was admissible under § 908.01(4)(b), STATS., we do not address inadmissibility under § 904.04, STATS.

did not specifically object to the timing of the photographs' publication, nor did he object to taking the stand while the jurors were still examining the photographs. Therefore, he has waived his right to object to the timing of the photographs' publication. *See* § 901.03(1)(a), STATS.; *see also State v. Wolff*, 171 Wis.2d 161, 165, 491 N.W.2d 498, 500 (Ct. App. 1992) (explaining that objection must state specific grounds on which it is based to avoid waiver).

In conclusion, Harris has failed to show that the trial court made any errors. Thus, he is not entitled to a new trial.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

